

APPENDIX A

AGREEMENT BY AND BETWEEN
THE STATE OF CALIFORNIA, DEPARTMENT OF FISH AND GAME
AND THE WOODBRIDGE IRRIGATION DISTRICT
FOR THE CONSTRUCTION, OPERATION AND MAINTENANCE
OF A FISH SCREEN AT WOODBRIDGE DIVERSION

THIS AGREEMENT made and entered into this 17th day of April, 1967, at Sacramento, California, by and between THE STATE OF CALIFORNIA, DEPARTMENT OF FISH AND GAME, acting by and through its duly appointed qualified and acting Director, hereinafter called the State, and THE WOODBRIDGE IRRIGATION DISTRICT, a public district, acting by and through its Chairman, Board of Directors, hereinafter called the District.

W I T N E S S E T H

WHEREAS, the District owns and operates a dam and a diversion for agricultural irrigation purposes on the Mokelumne River, in or near the town of Woodbridge, County of San Joaquin, State of California, and

WHEREAS, the State did on January 23, 1967, notify the District that, in accordance with the provisions of Sections 5991 and 5992, Fish and Game Code, the State had elected to construct and install a fish screen at said diversion, and

WHEREAS, the State and the District have approved and agreed to the scope of work as designated February 28, 1967, by revision to drawings entitled PROJECT FISH SCREEN PRELIMINARY PLAN SHEET C-1 and C-2, and M-1 attached hereto and marked Exhibit A, SHEETS 1, 2, and 3, and the PRELIMINARY ESTIMATE of costs prepared by the State dated 3-3-67, a copy of which is also attached and marked Exhibit B, page 1 and page 2.

NOW, THEREFORE, the parties hereto hereby agree as follows:

1. Subject to availability of State funds, the State will cause to be prepared working drawings and specifications and will furnish them to the District for review and comment. The District shall within 15 days return said working drawings and specifications to the State either with the District's approval noted thereon or with written suggestions for modification thereof. State shall accord District's suggestions full consideration and make such modifications, deletions or additions to the working drawings and specifications as the State deems appropriate; it being the intent of this agreement that State shall be fully and solely responsible for the design and construction of all works and facilities to be constructed under this agreement.
2. Subject to the availability of State funds, the State will advertise for bids for the construction of the fish screen and appurtenances. In the event the low bid received exceeds \$170,390 (direct construction cost, \$154,900, plus 10% contingency as indicated in Exhibit B), then either the State or the District may withdraw from this agreement by written notice to the other party within 15 days from the date bids were received by the State.
3. Subject to availability of State funds, the State will commence and diligently prosecute to completion the construction of said fish screen and appurtenances. All work which would interfere with the storage of water by Woodbridge Dam and or the diversion of water by the Woodbridge Irrigation Canal at Woodbridge shall be performed and completed subse-

quent to the end of the 1967 irrigation season and prior to the start of the 1968 irrigation season, i.e., between November 1, 1967, and March 1, 1968. All other work, including that which may be advantageously performed prior to November 1, 1967, and subsequent to March 1, 1968, shall be subject to schedule prepared by the State and approved in writing by the District.

4. All work to be performed and for which the District is financially obligated by this agreement shall be
 - a) performed by construction contract or contracts to be awarded and administered by the State in strict compliance with the applicable laws and regulations pertaining to such State contracts.
 - b) services furnished and performed by the State Office of Architecture and Construction which directly pertain to the design, supervision and inspection of construction; contract procurement and administration, including all advertising and legal work, not to exceed \$22,100.

5. Upon completion of said construction, the State shall notify the District of the amount of one-half of the State's construction cost, and the District shall remit that amount to the State.

It is agreed and understood by and between the parties hereto that the State will immediately, upon execution of this agreement by the parties hereto, and subject to availability of

State funds therefor and approval of the Department of Finance, apply to The United States of America under the provisions of Public Law 89-304 (Anadromous Fish Act) for approval, acceptance, and payment of an estimated one-half of the cost of said fish screen as described in said preliminary plans and cost estimates. In determining the State's cost of said fish screen, the State will deduct therefrom the amount, if any, paid by The United States of America, and the District shall pay one-half of the remainder.

6. The amounts to be paid by the District to the State as defined, determined and established in 4 and 5 next preceding are understood to include an estimated eleven thousand five hundred fifty dollars (\$11,550) for a "Welded Steel Pipe Fish Bypass" which is contemplated to extend from the proposed screening structure to and through the District's flashboard dam, and to discharge into the low level fish ladder at said dam. As of the time of execution of this agreement the District does not concede any liability to pay any portion of the costs pertaining to or accruing from the design and construction or the operation and maintenance of said bypass line, and nothing within the AGREEMENT or the tentative approvals given by District's representatives of the Preliminary Plans or otherwise shall be interpreted as assumption by District of any obligation to pay for any costs accruing from or pertaining to design and construction or the operation and maintenance of said Bypass and directly related appurtenances.

7. In the event that

- a) the State concedes the District has no liability under law to provide or to pay for any costs pertaining to or accruing from the design and construction and or the operation and maintenance of said Fish Bypass works and appurtenances, or
- b) the issue is resolved in District's favor by court decision,

THEN, the District's liability under this AGREEMENT shall be limited to one-half of the State's cost of the fish screen and appurtenances less the cost of the construction of the said Fish Bypass which shall be determined in accordance with the following formula:

$$\text{State's Costs} = \frac{\text{bid accepted} \times \$11,550}{\$154,900} \text{ minus federal funds received for fish by-pass}$$

- 8. Upon completion of said construction, the State shall notify the District of the amount due under this agreement and the District shall remit that amount to the State.
- 9. The District hereby grants to the State all necessary rights-of-way and easements over, on, under, and across lands of the District; and hereby permits the State to encroach upon any rights-of-way or easements of the District to the end that the State may construct, operate, and maintain said fish screen and its appurtenances in the locations designated in the final plans therefor; and the District further grants to the State the rights of egress and ingress at all times to and from said fish screen and appurtenances for the purposes of the

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State to exercise its rights to perform its duties and obligations under this agreement. It is expressly agreed and understood by and between the parties hereto that the State in the exercise of such rights and privileges, shall not unreasonably nor unnecessarily interfere with the properties and facilities or the operations of the District.

10. It is understood and agreed that the fish screen will be operated from March 1 to June 30 of each year, but that this period of operation may be shortened or lengthened in any year to coincide with the period of actual downstream migration of salmon and steelhead fishes as determined by the State.
11. State shall provide water necessary for operation of the Fish Bypass Pipe Line to the extent necessary as determined by State, by scheduling releases from Camanche Dam of water provided and designated "... for the utilization of the downstream fisheries on the Mokelumne River..." under Section 1.1 of the January 3, 1961 AGREEMENT between EAST BAY MUNICIPAL UTILITY DISTRICT and the STATE OF CALIFORNIA, and under SECTION 1 of the SUPPLEMENTAL AGREEMENT dated January 11, 1963, and State hereby agrees that all water which is required to be released by EAST BAY MUNICIPAL UTILITY DISTRICT for satisfaction of the prior rights of the WOODBRIDGE IRRIGATION DISTRICT and WOODBRIDGE WATER USERS CONSERVATION DISTRICT pursuant to the AGREEMENT between EAST BAY MUNICIPAL UTILITY DISTRICT, WOODBRIDGE IRRIGATION DISTRICT and WOODBRIDGE WATER USERS CONSERVATION DISTRICT, dated July 21, 1965, constitute waters which District

has the right to divert by means of the Woodbridge Canal at Woodbridge, and that all water released from Camanche Dam pursuant to said July 21, 1965 AGREEMENT for satisfaction of the rights of said Irrigation District and Conservation District, constitute property of said Irrigation District and Conservation District and that the full amount of such releases can be diverted by the Woodbridge Canal at Woodbridge.

12. Excepting as hereinafter provided in Section 13 during periods of time when Mokelumne River flow at Woodbridge resulting from water passing Camanche Dam is in excess of the amounts released from Camanche Dam and allocated pursuant to the hereinbefore mentioned EBMUD - WID & WWUCD July 21, 1965 AGREEMENT for
 - a) diversion by WID Canal at Woodbridge,
 - b) releases of water from East Bay Municipal Utility District's storage for water users below Woodbridge Dam, made pursuant to and in compliance with 13 (1) of said July 21, 1965 EBMUD-WID & WWUCD AGREEMENT.

THEN, District shall have the right to divert into its canal at Woodbridge such excess flows up to the limits of the rights acquired^{by}/State Water Rights License 5945, and the rights acquired and in the process of Licensing pursuant to State Water Rights Permit 6931.

13. If State pursuant to its hereinbefore mentioned AGREEMENT or SUPPLEMENTAL AGREEMENT with EAST BAY MUNICIPAL UTILITY DISTRICT requires the release downstream from Camanche Dam, for the utilization of downstream fisheries on the Mokelumne River, flows in excess of the amounts required for downstream channel

losses and diversions by riparian and appropriative water users, including the full diversion entitlements of District's canal at Woodbridge, as set forth in the hereinbefore mentioned EBMUD - WID & WWUCD July 21, 1965, AGREEMENT, and State notifies District of the times and duration of such releases for downstream fisheries, District shall limit its canal diversions at Woodbridge so as not to exceed the larger of the amounts to be determined by a) and b) following.

a) the entitlements as determined by the hereinbefore mentioned EBMUD - WID & WWUCD AGREEMENT,

b) the flow at Woodbridge which is in excess of the amount required for both

i) water users below Woodbridge Dam and as released by EAST BAY MUNICIPAL UTILITY DISTRICT under and in compliance with 13 (1) of the hereinbefore mentioned EBMUD - WID & WWUCD AGREEMENT, if any, plus

ii) releases from Camanche Dam for the utilization of downstream fisheries on the Mokelumne River designated by State and made by EAST BAY MUNICIPAL UTILITY DISTRICT specifically for utilization below Woodbridge Dam, and pursuant to the applicable provisions of the EAST BAY MUNICIPAL UTILITY DISTRICT and STATE OF CALIFORNIA Jan. 3, 1961 AGREEMENT and Jan. 11, 1963 SUPPLEMENTAL AGREEMENT.

14. District shall operate and keep reasonably free from debris said fish screen. For accounting purposes and reimbursement of District by State as provided in 15 following, the costs for the District's operation shall include,

- a) direct labor costs, which shall consist of the direct costs of salaries and wages, or other compensation paid District's own forces for the time employed inspecting, cleaning, and operating the screen, except compensation paid by District to District's superintendent.
- b) premiums for District's Workmen's Compensation Insurance costs directly accruing from a) next preceding.
- + c) disbursements made by District for purchase of materials, supplies, small tools, and incidental items consumed or required for operation of the screen.
- + d) payments made by District for electric service and power utilized in operating the screen and appurtenances including area lighting, etc.
- e) premiums paid for comprehensive public liability insurance pertaining to screens and appurtenances and the operation thereof.
- f) thirteen percent of the direct labor costs as defined above to compensate the District for its overhead, including administration, accounting, clerical and other office and field costs.
- + g) such other costs as may be incurred by District and directly accruing from work required for screen operation, and maintenance work performed pursuant to paragraph 19 hereof.

15. District shall quarterly notify State, in writing, of the screen's operating cost, and State shall remit to District an amount equal to one-half of such costs.
16. The District will have no responsibility for any costs incurred by the State for transplanting fish or for any fish trapping facility below said dam. Any such costs shall not be included in the computation of the State's cost in initial construction or maintenance or operation for which the District will reimburse the State.
- X 17. The District shall not be held responsible for and will not be required to reimburse State for any costs or expenses resulting from reconstruction or replacement of the said fish screen and appurtenances in the event of damage or destruction by flood, vandalism, acts of God, or conditions over which the District has no control, or for any repair, replacement, removal, reconstruction, or additional construction which may be necessary to provide and maintain the fish screening and adjoining river and canal channels bed and banks together with all constructed facilities and appurtenances structurally sound and reasonably adequate to prevent fish from passing into the canal and not unnecessarily impede the flow of water or prevent District from diverting up to 350 cubic feet per second of water through said screen and into District's canal.
18. The screen's maintenance costs to the State shall include the costs of direct labor, materials, supplies and transportation required to keep the screens and appurtenances in good repair and operating condition. Maintenance, as used in the preceding

sentence means physical work performed to minimize and to compensate for normal wear and tear, including necessary replacements of screen mesh and seals, chains, bearings, motors and controls, painting, repair of fences, roadways and hardstand areas, etc., as well as the seasonal screen installation, removal and securing for storage during non-operating periods. Such maintenance costs shall not include costs of any work for which District is not to be held responsible as set forth in 6, 7, and 17 preceding. Cost of direct labor as used in this paragraph shall include the State's costs of common and skilled labor and craftsmen, foremen, and direct superintendence for the time actually employed in the performance of maintenance work as hereinbefore defined, including all actual payroll costs and burden at 13% determined in accordance with State's standard accounting procedure. Work or services required and expenses incurred pertinent to inspection of the screen or for general determination, direction, inspection, or general supervision of the work shall not be included as maintenance costs of the State within the meaning of this paragraph.

19. The probability is recognized by both State and District that certain elements of the screen maintenance work as defined in 18 next preceding can be performed by District to the advantage of both parties. In the event State desires District to perform any element of work qualifying as maintenance under 18 preceding and District agrees to perform same, State shall specifically and in writing authorize District's performance thereof.

If work exceeds an estimated cost of \$1,000, Department of General Services approval will be obtained prior to commencing work.

Work performed by District pursuant to such authorization by State shall be considered and paid for in the same manner as provided in 14 and 15 preceding for costs of operation of the fish screen.

20. State shall quarterly notify District, in writing of the cost of maintenance determined in accordance with 18 preceding and District shall remit to State an amount equal to one-half of such cost. The cost to State for work performed by District pursuant to 19 preceding shall not be included as costs of maintenance for which District is obligated to recompense State.
21. The provisions of this agreement shall extend to and be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.
22. This agreement shall be for a term commencing with the date hereof and continuing for so long as said dam or diversion exists, unless sooner terminated by mutual agreement of the parties hereto.

IN WITNESS WHEREOF, this agreement has been executed by and on behalf of the parties hereto as of the day and year first above written.

Approved:

STATE OF CALIFORNIA
Department of General Services

By _____

STATE OF CALIFORNIA
Department of Fish and Game

By

James L. Lerby
Director

WOODBIDGE IRRIGATION DISTRICT

By

R. W. [Signature]
Chairman, Board of Directors
President

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